

Nos. 23-12408-E & 23-12411-J (consolidated)

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

◆

BLAKE WARNER,
Plaintiff-Appellant,

v.

SCHOOL BOARD OF HILLSBOROUGH COUNTY, FLORIDA,
Defendant-Appellee.

◆

On Appeal from the United States District Court
for the Middle District of Florida
(8:23-cv-00181-SDM-JSS & 8:23-cv-01029-SDM-SPF)

**MOTION FOR EXTENSION OF TIME TO FILE
PETITION FOR REHEARING EN BANC**

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Nos. 23-12408-E and 23-12411-J (consolidated)
Warner v. School Board of Hillsborough County, Florida

**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 21.1-1, the undersigned counsel certifies that the following listed persons and parties may have an interest in the outcome of this case:

1. **AKERMAN LLP** (Attorneys for Appellee)
2. **BAKER BOTTS, LLP** (Attorneys for Appellant)
3. **BUTTERFIELD, Justin** (Attorney for Appellant)
4. **ERICKSON, Matthew P.** (Attorney for Appellant)
5. **FIORE, Kristen** (Attorney for Appellee)
6. **FIRST LIBERTY INSTITUTE** (Attorneys for Appellant)
7. **FLYNN, Hon. Sean P.** (U.S. Magistrate Judge, M.D. Fla.)
8. **HILDERBRAND, Matthew M.** (Attorney for Appellant)
9. **J.W.** (Minor child of Appellant)
10. **MARGOLIN, Jason L.** (Attorney for Appellee)
11. **MERRYDAY, Hon. Steven D.** (U.S. District Judge, M.D. Fla.)

12. **SASSER, Hiram** (Attorney for Appellant)
13. **SCHOOL BOARD OF HILLSBOROUGH COUNTY, FL** (Appellee)
14. **SNEED, Hon. Julie S.** (U.S. Magistrate Judge, M.D. Fla.)
15. **STREETT, Aaron M.** (Attorney for Appellant)
16. **WARNER, Blake Andrew** (Appellant)

The undersigned also certifies that no publicly traded company or corporation has an interest in the outcome of this case or appeal.

MOTION FOR EXTENSION OF TIME

Appellant Blake Warner, through his *pro bono* counsel, respectfully requests a two-week extension of time to file his petition for rehearing en banc until Wednesday, June 12, 2024.

1. This Court entered a judgment in the case on May 8, 2024. *See Warner v. School Bd. of Hillsborough Cnty.*, No. 23-12408 & 23-12411, 2024 WL 2053698 (11th Cir. May 8, 2024) (per curiam).

2. A petition for rehearing or for rehearing en banc is due within 21 days of that order. *See* 11th Cir. R. 35-2. The current deadline for Mr. Warner to file a petition for rehearing is May 29, 2024.

3. The panel held that it was bound by prior precedent holding that a parent may not represent his child *pro se* in federal court. *Warner*, 2024 WL 2053698, at *2 (citing *Devine v. Indian River Cnty. Sch. Bd.*, 121 F.3d 576 (11th Cir. 1997)). As the panel noted, under the “prior panel precedent rule,” it was “bound by *Devine* ‘unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this court sitting en banc.’”

Id. at *3 (citation omitted). As a result of this “counsel mandate,” the child’s claims were dismissed for lack of representation.

4. Although Mr. Warner was proceeding *pro se* in the district court, he has obtained *pro bono* counsel for this appeal.

5. The attorneys handling principal briefing for the petition for rehearing en banc have significant commitments on other matters over the next few weeks that have made such an extension necessary. For example, in addition to the petition for rehearing en banc, Aaron M. Streett has the following obligations: an oral argument on June 3, 2024 in *DM Arbor Court, Ltd. v. City of Houston, Tex.*, Cause No. 23-20385, in the U.S. Court of Appeals for the Fifth Circuit. Matthew Erickson has a brief on the merits due May 22, 2024 in *Warner v. Hillsborough County Clerk of Courts*, Cause No. 24-10748 in the U.S. Court of Appeals for the Eleventh Circuit.

6. Mr. Warner maintains his position that *Devine* is inconsistent with 16 U.S.C. § 1654, the constitutional rights of both parents and children, and Federal Rule of Civil Procedure 17. In order to put his best foot forward, including conducting research to support the heightened standard for en-

banc rehearing, he respectfully requests an additional two weeks to prepare his petition for rehearing en banc for this Court's consideration.

7. Counsel for Mr. Warner contacted opposing counsel on May 17, 2024 to inquire whether they were opposed to this extension. Opposing counsel have not responded.

8. Accordingly, Mr. Warner requests that the Court grant this motion and extend the deadline to file a petition for rehearing en banc from May 29, 2024, to June 12, 2024.

Dated: May 20, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the page and type-volume limitations of Fed. R. App. P. 27(d)(2), because it contains 465 words, and with the type face and type style requirements of 11th Cir. Rule 27(a)(1) and Fed. R. App. P. 32(a)(5)–(6), because it has been prepared in a proportionally spaced face using 14-point Palatino Linotype.

/s/ Matthew P. Erickson

Matthew P. Erickson

CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2024, I electronically filed this brief and thereby served all counsel of record through the Court's CM/ECF system.

/s/ Matthew P. Erickson

Matthew P. Erickson